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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 HENRY NGO WU,

11 Petitioner,

12 vs.

13 BEN CURRY,

14 Respondent.
15 _____

) C 07-1710 MMC(PR)

) **ORDER OF DISMISSAL;**
) **DENYING APPLICATION FOR**
) **LEAVE TO PROCEED IN**
) **FORMA PAUPERIS**

) (Docket No. 4)
)

16 On March 26, 2007, petitioner, a California prisoner proceeding pro se, filed the
17 above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He challenges
18 a 2004 decision by the California Board of Prison Hearings (“BPH”) to deny him parole.
19

20 On April 30, 2007, plaintiff filed a letter indicating that the instant petition is an
21 identical copy of a petition filed by petitioner in a previous habeas action, Wu v. Curry, No.
22 C 07-1438 MMC (PR), which action is currently pending. A complaint that merely repeats
23 pending or previously litigated claims is frivolous and may be dismissed sua sponte. See
24 Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); Bailey v. Johnson, 846 F.2d
25 1019, 1021 (5th Cir. 1988); see also 28 U.S.C. § 2244(b)(3)(A) (providing that second or
26 successive petition may not be filed in district court unless petitioner first obtains from
27 United States Court of Appeals order authorizing such petition). As the instant petition is
28 identical to petitioner’s earlier-filed petition, the instant action is hereby DISMISSED as

1 duplicative.¹


2 In light of this dismissal, the application to proceed in forma pauperis is DENIED, and
3 no fee is due.

4 This order terminates Docket No. 4.

5 The Clerk shall close the file.

6 IT IS SO ORDERED.

7 DATED: June 11, 2007

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9 MAXINE M. CHESNEY
United States District Judge

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¹In his April 30, 2007 letter, petitioner requested that the Court either dismiss one of the two cases or, alternatively, that both cases be “consolidated.” The Court sees no purpose in consolidating two identical cases. Dismissal of the instant action will not adversely affect the Court’s consideration of the petition in the earlier-filed case.